

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 163 and 164
Title 14, California Code of Regulations
Re: Harvest of Herring and Harvest of Herring Eggs

- I. Date of Initial Statement of Reasons: April 13, 2011
- II. Date of Final Statement of Reasons: September 16, 2011
- III. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: June 30, 2011
Location: Stockton, CA |
| (b) | Discussion Hearing: | Date: August 3, 2011
Location: Sacramento, CA |
| (c) | Adoption Hearing: | Date: September 15, 2011
Location: Redding, CA |

- #### IV. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

The Commission voted to adopt a no change option and continue with the 1,920 ton quota adopted for the 2010-2011 season for San Francisco Bay, which is within the quota option range between zero to 10 percent of the 2010-2011 spawning biomass estimate noticed in the Initial Statement of Reasons. Further, the Commission adopted the Department's recommendation to increase the daily market order from a licensed fish dealer for herring fresh fish market permittees from 500 to 1,000 pounds. In addition, the Commission adopted the Department recommended season dates for the Tomales Bay and San Francisco Bay herring roe and fresh fish market fisheries, and minor changes were made to simplify requirements for herring permit applications due to the implementation of the Department's Automated License Data System (ALDS).

- V. Summary of Primary Considerations Raised in Opposition and in Support:

Mr. Ernie Koepf (San Francisco Bay Herring Permittee) letter received by Commission September 2, 2011 (Attachment 1)

Comment 1

Mr. Koepf stated that he would like to forward a letter of endorsement from Mr. Mel Wickliffe (see below) for a proposal that would allow the sale of herring to the public as seasonal fresh fish for local consumption.

Response

Comment noted.

Comment 2

Mr. Koepf stated that herring for fresh fish would be made available through the simple regulation change proposed by the Department and would allow the current 20 ton quota (for the San Francisco Bay fresh fish market permittees) to be harvested between October 1 and April 1.

Response

The Department supports changing the season dates for the herring fresh fish fishery. However, the specific dates that the Department has recommended for San Francisco Bay and Tomales Bay fresh fish market are from November 2 until March 31. Additionally, the fresh fish fishery would be closed when the San Francisco Bay and Tomales Bay limited entry Pacific herring gill net permit fisheries are open. The changes to the fishing period for San Francisco Bay and Tomales Bay fresh fish market permits will allow fresh fish market permittees access to Pacific herring when they are typically present in both bays. It will also prohibit fishing in the months of the year when adult herring are absent, reducing the chance for unwanted by-catch.

Comment 3

Mr. Koepf also stated that he received verbal endorsements from Pietro Parvano, President of the Institute of Fisheries Resources and Mr. Paul Johnson of the Monterey Fish Market for the Department's proposed regulations.

Response

Comments noted.

Mr. Mel Wickliffe (President, Pier 45 Seafood) letter received by Commission September 2, 2011 (Attachment 1)

Comment 1

Mr. Wickliffe states that as a wholesaler involved with the marketing of fresh and local seafood he would like to endorse the proposal to change the fishing

season dates for herring fresh fish market permittees based on the following reasons; the public has become savvy and aware of the seafood they consume and local products are in greater demand, and they know which products contain oils and nutrients that have been proven to be beneficial to a healthy lifestyle.

Response

Comment noted.

Comment 2

Mr. Wickliffe states that the herring roe fishery has dominated the local resource and left the public without the opportunity to purchase herring. He would like to see this change and allow herring to join the many other local seafood products being brought to market.

Comment noted.

Comment 3

Mr. Wickliffe also states that there is a small local market developing for herring, but they are only available during a very small window under the current regulations. Thus, the local fresh food herring market would benefit if current regulations were changed to allow the take of herring in the months they (herring) are available.

Response

See Department Response to Comment 2 by Mr. Ernie Koepf.

Nick Sohrakoff (Herring Permittee and President of San Francisco Bay Herring Research Association), in oral comment at the September 15, 2011, Commission Meeting

Comment 1

Mr. Sohrakoff stated that the San Francisco Bay Herring Research Association (Association) has spent over \$200,000 assisting the Department with herring population surveys on San Francisco Bay.

Response

The Department appreciates the assistance the Association has provided during the previous two seasons with herring spawning biomass surveys.

Comment 2

Mr. Sohrakoff states the fishermen recognize the importance of herring research and that knowledge of the fishery leads to a sustainable fishery.

Response

Comment noted.

Comment 3

Mr. Sohrakoff also states that the Association is assisting with the implementation of new hydro-acoustic technology to supplement Department spawning biomass surveys and is contributing other equipment to keep the Department research vessels in good operating condition.

Response

The Department looks forward to working with the Association on a pilot study to determine the effectiveness and efficiency of this population survey technology in San Francisco Bay.

Comment 4

Mr. Sohrakoff states that the Association is in the process of budgeting an additional \$500,000 for herring research, which includes over \$50,000 for a contract with internationally known scientists to perform population modeling on the San Francisco Bay herring stock.

Response

The Department considers population modeling an important tool for managing Pacific herring stocks and determining sustainable harvest levels. The Department looks forward to the development of this invaluable management tool.

Sam Liberati (Herring Permittee and Chairman of the Director's Herring Advisory Committee), in oral comment at the September 15, 2011, Commission Meeting

Comment 1

Mr. Liberati states that he has watched the fishery go from a first-class fishery to near total disaster; however, with cooperation of Department staff, Commission members, and Herring Permittees the fishery is now back on track.

Response

Comment noted.

Comment 2

Mr. Liberati thanked Department herring team staff and retired Department Herring Fishery Manager, Frank Henry, for their efforts to work collaboratively with the fishermen on herring fishery management issues.

Response

Department staff appreciates the positive feedback from the Director's Herring Advisory Committee and looks forward to continuing our productive working relationship.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: No alternatives were identified.

(b) No Change Alternative:

A no change alternative would provide a quota for the 2011-2012 fishing season of 1,920 tons.

(c) Consideration of Alternatives:

No alternate proposals were presented to the Department.

IX. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Department is providing the Commission a quota option range from zero to 10 percent of the 2010-2011 spawning biomass estimate of 57,082 tons. The potential changes to State total economic output, if the Commission were to choose a 10 percent, five percent, or zero percent option, are \$4,262,000, \$1,113,000, and \$(2,053,000), respectively, relative to last season. Both the 10 and five percent options result in positive incremental contributions to economic output for the State, whereas the zero percent option would result in an adverse impact to economic output for the State, and loss of \$2,053,000 (2010 dollars). This is based on an economic output multiplier of 1.774 for calculating total direct, indirect, and induced impacts to California's economy from the herring fishery.

Depending on which harvest option the Fish and Game Commission chooses for 2011-2012, the harvestable quota will be between zero and 5,708 tons. There would be no adverse incremental economic impact to businesses in California under the Department's recommended five percent quota of 2,854 tons. Given current market conditions for herring roe, none of the quota options are expected to adversely affect the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Depending on which harvest option the Fish and Game Commission chooses for 2011-2012, the harvestable quota will be between zero and 5,708 tons. Both the 10 percent and five percent harvest options, result in positive incremental contributions to employment for the State, 524 and 137 jobs, respectively, whereas a zero percent harvest could result in 253 potential job losses. This is based on an employment multiplier of 218.3 jobs per million dollars produced in direct fishing revenue from the California herring fishery.

Assuming a quota is set at the Department's recommended five percent; equal to 2,854 tons, there would be a potential incremental increase in direct fishing revenue of \$627,000, and increase of 137 jobs related to California's herring fishery.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

UPDATED INFORMATIVE DIGEST\POLICY STATEMENT OVERVIEW

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota, season dates and times for fishing operations for the 2011-2012 season in San Francisco Bay based on the most recent biomass assessments of spawning populations of herring as well as season dates and times for fishing operations for the 2011-2012 season in Tomales Bay. There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2011-2012 herring season.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

- Set the San Francisco Bay quota between zero (0) and 10 percent (0 and 5,708 tons) of the 2010-2011 spawning biomass. The Department is recommending that the San Francisco Bay quota be set at 2,854 tons, which is five percent of the 2010-2011 spawning biomass. If the Commission were to adopt this option, a 2,854 ton quota would result in a 5.0 ton individual quota for a "CH" gill net permittee and a 3.3 ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.

The Commission voted to adopt a no change option which leaves the current 1,920 ton quota in place for the 2011-2012 season for San Francisco Bay, which is within the quota option range between zero to 10 percent of the 2010-2011 spawning biomass estimate noticed in the Initial Statement of Reasons. A 1,920 quota will result in a 3.4 ton individual quota for a "CH" gill net permittee and a 2.2 ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.

- Increase the daily market order from a licensed fish dealer for herring fresh fish market permittees from 500 to 1,000 pounds.
- Set the dates of the roe herring fisheries in San Francisco Bay for Odd and Even platoons in San Francisco Bay from noon on Monday, January 2, 2012, until noon on Friday, March 9, 2012.
- Set the dates of the roe herring fishery in Tomales Bay from noon on Monday, December 26, 2011, until noon on Friday, February 24, 2012.

- Allow San Francisco Bay and Tomales Bay fresh fish market permits to be fished from November 2 until March 31, excluding days during that period when the San Francisco Bay and Tomales Bay limited entry Pacific herring gill net permit fisheries are open.

The Commission adopted the Department recommended proposed regulations increasing the daily market order for herring fresh fish market permittees, and season dates for San Francisco Bay and Tomales Bay for the 2011-2012 commercial herring season.

The following are minor editorial changes proposed to improve clarity and consistency of the regulations:

- The proposed regulations would simplify requirements for herring permit applications due to the implementation of the Department's Automated License Data System (ALDS). ALDS streamlines the license process, so that permittees will no longer be required to submit copies of a current license or registration when renewing permits. This information will be available electronically which eliminates the need for paper documentation. Application form numbers and fee amounts will be removed and replaced with reference to Section 705 of Title 14, CCR, pending approval of amendments to Section 705 in a separate rulemaking. This section contains application numbers and fee amounts for commercial fishing permits.

The Commission approved of minor admendments to clarify and simplify the regulations.

Attachment 1

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CALIFORNIA
FISH AND GAME
COMMISSION

2011 SEP -2 PM 1:56

Dear Commissioners,

I would like to forward this letter of endorsement of the proposal that would allow the possibility for herring to be made available to the public as fresh and seasonal seafood for consumption locally. This would occur through the simple regulation change included in the adoption package being proposed by the Dept. This change would allow for the current 20 ton quota to be harvested between Oct 1st and April 1st. }¹

In addition to the letter from Pier 45 Seafood, Paul Johnson of the Monterey Fish Market has contacted me with his verbal endorsement of this proposal. Pietro Paravano, President if the Institute of Fisheries Resources also endorses the proposal that may bring herring to market as a seasonal food. }²

Thank you,

Ernie Koepf
H-3-SF, H-186-SF, DH-433-SF



Attachment 2



Pier 45 Seafood
350 Bay St. Suite 100-357
San Francisco, CA. 94133
Tel: 415-409-3474
Fax: 415-409-3034

John Mello
Senior Biologist Supervisor
Statewide Herring Manager
Department of Fish and Game

Dear Mr. Mello:

It has come to my attention that a proposal directed toward the change of herring fresh food regulations is being considered. As a wholesaler involved in marketing fresh and local seafood I would like to endorse this proposal for the following reasons.

The public has become very savvy and aware of the seafood they consume and the local products are in demand as never before. The public knows which products contain oils and nutrients that have been proven to be beneficial to a healthy lifestyle and they seek them out. The herring sac roe fishery has long dominated the local resource and has left the local public without opportunity to purchase herring. I feel that this should now change and we should allow herring to join the many other local seafood products being brought to market.

This is not speculation. There is a small market developing and herring are being sold to the public. Unfortunately, they are only available during the very small window of opportunity that current regulations allow. The local fresh food herring market would definitely benefit if current regulations were changed to allow the take of herring in the months that are available. Let herring as a fresh food take its rightful place with other local seafood products by adopting the proposed changes.

Thank you,

Mel Wickliffe
President
Pier 45 Seafood